

**Town of Amherst**  
**Zoning Board of Appeals - Special Permit**

*DECISION*

**Applicant:** Jordel Corporation, DBA Delano's

**Date application filed with the Town Clerk:** July 2, 2008

**Nature of request:** Modification of Special Permit ZBA FY90-6 for seasonal outdoor dining, with alcohol, under Sections 5.041 and 9.22 of the Zoning Bylaw

**Address:** 55-57 North Pleasant Street (May 14A, Parcel 47, B-G Zoning District)

**Legal notice:** Published on July 30 and August 6, 2008 in the Daily Hampshire Gazette and sent to abutters on July 29, 2008

**Board members:** Barbara Ford, Hilda Greenbaum and Albert Woodhull

**Submissions:** The petitioner submitted the following with the application:

- A Management Plan;
- A site plan and a set of building plans for the reconstruction of the back section of the building and the outdoor dining terrace, drawn by Archimetrics Design Studio, dated 6/25/08;
- Pictures of the proposed fence, the proposed post lantern and the pavers for the outdoor terrace;
- A copy of the menu of food served at Delano's, prepared by Pinocchios;
- A copy of the students of the ServSafe Alcohol Course, from which all Delano's employees must have a certificate.

The Design Review Board reviewed the application and submitted a memo with a few modifications of the patio fence and lighting, dated August 8, 2008.

Previous Special Permits included:

- ZBA FY79-32 – to operate a restaurant;
- ZBA FY90-6 – to install a billiard table in the back room of the restaurant.

For the September 3, 2008 meeting of the ZBA, the petitioner submitted pictures of possible lattice fences for installation at the rear of the property, and a revised site plan showing the patio fence, refuse/recycling shed and proposed vegetation.

**Site Visit:** August 13, 2008

The Board met with Mr. and Ms. Delano at the site and observed the following:

- An older building, with the back section removed, where the extension of the kitchen area, new egress and new outdoor dining is planned;
- A narrow driveway on the north side of the building, which is planned to be improved and used as a walkway to the outdoor dining area;
- An existing bare dirt back area where the dining terrace is planned, which also will be landscaped;
- A lattice fence from Judy's, the abutting restaurant to the south, which extends along the property

line next to the Boltwood Garage, and which extends behind Delano's as well;

- The location of the dumpster, which the Board suggested moving away from the proposed outdoor terrace;
- The improvements made to the properties nearby that abut the Boltwood Garage area.

**Public Hearing:** August 14, 2008

Chick and Susan Delano spoke to the application at the hearing. They gave the following information:

- A back room of the restaurant was built in 1978, which has now been torn down;
- They would like to use the footprint of the room to build a patio for outdoor dining;
- There will be a 4-foot sturdy fence around the patio as shown in the submitted picture;
- The entrance to the gated patio will be the only way to enter, since alcohol will be served there, and the patio must be monitored;
- They also would like to put a lattice-type fence (approximately 6 feet high) at the back of the property in front of the Monkey Bar chain link fence and dumpsters;
- The lattice fence will be vinyl, made to look like wood, installed by Amherst Landscape Co.;
- The patio fence will be necessary, but the lattice fence will be for aesthetic reasons;
- The refuse and recycling containers will be kept in a new shed in front of the newly installed lattice fence at the easterly most edge of the property;
- They plan to install either two or three trees in the backyard in order to give shade to the patio;
- Forsythia bushes will be planted along the south side of the property line to shield the patio from Judie's Restaurant to the south;
- Any landscaping concerns the Board might have the applicants will take back to Amherst Landscape for more consideration;
- Delano's has been in business for 32 years; they used to serve over 300 meals/day, but now they only serve pizza and entrees from Pinocchio's, who lease their kitchen space;
- There is no business in the summer, hence the reconstruction at this time;
- They hope to attract more families with the patio;
- Since most of their clientele are students, there is security checking IDs from 8 pm until closing at the all entrances, and there will be security at the patio gated entrance as well;
- Patio furniture will be stored in the basement in the off-season;
- The entrance to the patio will be from inside the building as well as from the sidewalk between the back of the building and the patio;
- Occupancy of the patio will be 12 patrons;
- Only the wait staff, who are trained in SafeServ alcohol service, will serve alcoholic beverages;
- Total occupancy of the patio and building will be 99 people, including staff;
- There are a maximum of 10 staff on the premises on weekend evenings during the school year;
- Siding will be installed on the north and east sides of the building, and the new addition, also sided, will be off the east side;
- The driveway to the north of the building will no longer have parked cars, but will be essentially a pedestrian walkway;
- The driveway and path from the Boltwood Garage area will be crushed gravel, TRG;
- There will be no music or entertainment on the patio, only food and beverages;
- The patio will be wheelchair accessible from North Pleasant Street via the walkway along the north side of the building, or from the Boltwood Garage area over the surface of the ground.

The Board asked about the operations of the inside of the building, the seating and the billiard table;

Mr. Delano said that the billiard table room is gone, and the table will be as well. The existing front room

will have free standing tables.

Ms. Greenbaum asked about cooking oil. Mr. Delano said that used cooking oil is stored in a 50-gallon drum and is picked up every other week. He would like it to be used for vehicles that run on vegetable oil.

Mr. Delano said that deliveries to his building are made from the commercial parking area in front of the building along North Pleasant Street or from the Boltwood Garage area. Either way, the delivery people walk the food and beverages into the restaurant.

Ms. Ford asked how Delano's plans will fit into those of the Boltwood Garage area. Mr. Delano said that he has been well aware of the Boltwood upgrade plans and has served on several committees dealing with it. His plans are part of the improvement of the entire neighborhood.

Ms. Ford noted the recommendation of the Design Review Board (DRB). The color scheme will be cream-colored siding for the renovated portion of the building. The remainder of the building will be sage green on the sides and blue in the front. The DRB recommendations of extra post lanterns around the patio were endorsed by the ZBA.

With regard to the other DRB recommendations, the ZBA felt that fencing should be on all sides of the patio, not three sides, and the enclosure for waste be moved to the back of the property.

Building Commissioner Bonnie Weeks stated that, even though the new back portion of the building was not listed in the application, the Board needs to address it, since the property is non-conforming in terms of sideyard setbacks. The footnotes to Table 3, Dimensional Regulations of the Zoning Bylaw, state that in a B-G district, no basic lot area or minimal frontage is required. The sideyard setback is approximately 2.5 feet on the south side and 8.5 feet on the north side of the building. The Bylaw states, that if provided, the sideyard setbacks shall be 10 feet in the B-G district.

Mr. Delano described the new addition to the back of the building, on the east side. The back exit will change, and new stairs and a new wall will be built. The steps will be covered, as will the delivery window. The kitchen will remain essentially the same, but with a separate dishwashing area and more space for the back stairs. There will be a new window to serve food for the patio area. The back wall of the kitchen will be reinforced. The HVAC system is on the south side of the building and will remain the same.

In terms of non-conformity, Mr. Woodhull stated that a smaller structure is replacing a larger structure and the building will be much improved, so that the overall non-conformity will be less. Also, under Section 9.22 of the Zoning Bylaw, non-conforming structures can be altered if the alteration is not more detrimental to the neighborhood.

The Board agreed that the new section of the building will be less detrimental than the old, and meets the criteria of Section 9.22 of the Zoning Bylaw.

Ms. Weeks noted that there are no building code issues or problems that she can see.

Ms. Greenbaum mentioned litter control as an important part of outdoor dining, and that constant monitoring of the property should be added. Ms. Delano said that only flatware and dishes will be used outdoors. Also, all refuse will be disposed of in the new enclosure, and is picked up several times per week.

Ms. Ford opened the hearing to public for comment.

Kathy Koplow, manager of the Clark House, says that noise is an issue for residents of the Clark House. She contended that the Amherst Redevelopment Authority planned for the needs of the elderly when the location of the building was made. There are 100 families in the Clark House and the noise can be detrimental, she said. The garage area is like an amphitheater, amplifying the sound from the Boltwood area, North Pleasant and Main Streets. There were 11 noise complaints in April and 14 in May on the Clark House log, she said. She felt that the application does not meet the conditions of Section 10.38 of the Zoning Bylaw, suitability to the neighborhood.

Ms. Koplow asked that if the permit is granted, the following conditions be placed on the permit:

1. No outdoor dining after 9 p.m.;
2. No standing service outdoors;
3. No cooking or music outdoors;
4. No disposable containers outdoors.

The Board asked if there were any noise complaints from La Piazza Restaurant, which is right next door to the Clark House and has outdoor dining. She said that the complaints were general noise ones, with no specific places identified.

The Board noted that Delano's is further away from the Clark House, but does have a different clientele than La Piazza. The Monkey Bar, next to Delano's does have a similar clientele in the late evening.

Mr. Delano said that he has been in the business for 32 years, and the student clients do not leave his place with alcohol. Also, the exit is via North Pleasant Street, not onto Boltwood Walk. There have been no complaints about his business. Ms. Delano also said that students have different hours now, and their main hours of business are between 11 p.m. and 1 a.m., so they definitely want to keep the hours of operation on the patio until 1 a.m.

Ms. Greenbaum noted that with the patio fence and Judie's fence along the Boltwood border behind Delano's, the noise will be attenuated.

Edward Borowski, 325 Pine Street, said the fabric on the fence will deaden noise as well.

Mark Parent, from the Town Commercial Relations Committee, said that he was interested in the hearing, but had no comment to make.

Ms. Ford asked her fellow ZBA members if they were in favor of limiting the hours that the patio would be open. The Board did agree that the ability for Delano's to have a viable business would be limited if their hours of operation were limited, and other bars/restaurants were left open.

Mr. Delano said that the kitchen closes at 1 a.m., when the Delano's restaurant/bar closes. Deliveries from Pinocchio's staff, who cook and deliver, continue until 2 a.m.

The information that Pinocchio's delivers from Delano's kitchen after hours was new to the Board and Building Commissioner. There was discussion of how to process the dual use of the property. The Board was clear that there would be no deliveries from the pick-up window for the patio. Further discussion of this issue was postponed until later.

Ms. Greenbaum made a motion to close the hearing. Mr. Woodhull seconded the motion, and the vote was unanimous to close the hearing.

**Public Meeting:**

Ms. Ford asked if the other members of the ZBA had any issues in approving the outdoor dining and alcohol service, with conditions. The Board had none. They noted that the change to the back of the building, the patio and fencing was a significant improvement to the property and that the outdoor dining may attract families during the evening hours.

Mr. Woodhull noted that the patio will be at ground level, and the noise may carry to a lesser degree than the Monkey Bar and Judie's outdoor dining on either side of Delano's. Their outdoor dining is on second floor terraces.

Ms. Greenbaum said that Delano's is in the downtown business district, where other operations of this type are located. There are folks living downtown, and there are many advantages to living close to businesses, but noise is also a part of living downtown.

The Board did note that another meeting would be needed in order to review an updated site plan showing the fence around the patio, the extra fence at the back of the property, the change of location of the refuse/recycling shed and the landscaping.

They also asked the zoning assistant to research closing hours of other outdoor dining places in the downtown business district, such as Judie's, Monkey Bar, La Piazza, and Amherst Brew Pub.

Ms. Greenbaum made a motion to continue the public meeting to September 3, 2008 at 7:30 p.m. Ms. Ford seconded the motion and the vote was unanimous to continue the public meeting to September 3, 2008 at 7:30 p.m.

**Public Meeting – (continued) September 3, 2008**

The Board examined a second set of drawings that the applicants had prepared. They noted the following changes:

- The patio will be enclosed by a 4-foot high fence around three sides; the back side of the building will be the fourth side;
- There will be six tables of four seats, instead the previous plan of four tables of six (6) seats, for a capacity of twenty-four (24) patrons;
- There will be two ways of getting into the patio – through the restaurant, or via the gate;
- Access to the gate will normally be via the walkway (formerly Delano's driveway) or across Judie's backyard from the Boltwood garage;
- Both the walkway and the back of the property will consist of p-gravel;
- The gate will be monitored at all times when the patio is open;
- No arrangements have been made with Judie's yet about a gate through her fence at the back of Delano's property;
- The fence at the back of the property, in front of the Monkey Bar chain link fence would be a wooden picket one; either design submitted by the applicant would be acceptable;
- The trash/recycling shed will now be in the north-east corner of the property, further shielding Delano's from the Monkey Bar trash containers.

The Board asked a number of clarifying questions of Mr. and Ms. Delano:

- The forsythia bushes first proposed on the south boundary between Delano's and Judie's are no longer there. The applicant said that they may be too sprawling and would not be needed in any case;
- If other shrubbery is needed along the southern boundary, the applicants will have plantings added;
- The delivery window will only be for patrons on the patio;
- Customers who order take-out food have entered via the front door in the past; they will continue to do so, even with the back window;
- Delivery service for Pinocchio's will enter from the back stairway to the kitchen to pick up food as they currently do;
- Folks exiting the patio after 9 p.m. will do so only through the restaurant onto North Pleasant Street;
- After 10 p.m., patrons cannot enter the patio from the gate; they must enter from the building;
- There will be food service available at all times from 11 a.m. to 1 a.m.;
- The bar closes at 1 a.m.; staff cleans up after and must be gone by 2:30 a.m.

The Planning Department had collected six (6) of the Special Permits for outdoor dining in the downtown area, including the two establishments on either side of Delano's. All but one, La Piazza Ristorante, maintain the same hours of closing for the outdoor and indoor dining. (La Piazza closed their small outdoor dining section at 11 p.m. and indoor at 1 a.m.) The Board determined that Delano's should be treated in the same manner as the other downtown restaurants, and set the hours of operation for both indoor and outdoor service from 11 a.m. to 1 a.m.

The Board spent the remainder of the evening crafting conditions of the Special Permit.

### **Findings:**

The Board finds under Section 10.38 of the Zoning Bylaw, Specific Findings required of all Special Permits, that:

10.380 and 10.381 – The proposal is suitably located in the neighborhood and is compatible with existing uses because there are other restaurants with outdoor dining and alcohol service in the immediate neighborhood.

10.382 and 10.385 – The proposal would not constitute a nuisance and reasonably protects the adjoining premises against detrimental or offensive uses on the site because there will be a series of fences in the back of the property to attenuate the noise, the patio will be gated with staff, and the number of customers on the patio will be limited to 24.

10.383, 10.384 and 10.387 – The proposal would not be a substantial inconvenience or hazard to abutters, vehicles or pedestrians; the proposal also provides convenient and safe vehicular and pedestrian movement within the site and in relation to adjacent streets because the building will be less non-conforming than earlier, the former driveway will now be a walkway, and the outdoor dining will be contained within a fence.

10.386 – The proposal is in conformance with the Sign and Parking regulations of the town because any sign changes will come before the Board at a public meeting, and the restaurant is located in the municipal parking zone, where parking is provided by the Town.

10.389 – The proposal provides adequate methods of disposal and/or storage for sewage, refuse, recyclables and other wastes because the property is connected to Town water/sewer, and the Management Plan describes the refuse/recyclable disposal process. A shed dedicated to refuse/recycling will be built as well, located in the north-east corner of the property away from the patio.

10.392 – The proposal provides adequate landscaping, including the screening of adjacent residential uses, because the site plan approved by the Board shows several evergreen and deciduous trees in the back yard, plus flowers. One of the conditions of the permit is that the landscaping be maintained in perpetuity.

10.393 – The proposal provides protection of adjacent properties by minimizing the intrusion of lighting because all new outdoor lighting will be pointed downward.

10.395 – The proposal does not create disharmony with respect to the use, scale and architecture of existing buildings in the vicinity because the new construction to the building and the patio plus landscaping will significantly improve the property and add to the upgrade of the entire Boltwood garage area.

10.398 – The proposal is in harmony with the general purpose and intent of the Zoning Bylaw because it protects the health, safety, convenience and general welfare of the inhabitants of the Town of Amherst. It will also greatly enhance the look of the property from the Boltwood garage area.

**Public Meeting – Zoning Board Decision**

Mr. Woodhull made a motion to APPROVE the permit, with conditions. Ms. Greenbaum seconded the motion.

For all of the reasons stated above, the Board VOTED unanimously to grant a Special Permit to Jordel Corp., dba Delano's for a modification of Special Permit ZBA FY90-6 for seasonal outdoor dining with alcohol service under Section 5.041 of the Zoning Bylaw, at 55-57 North Pleasant Street (Map 14A, Parcel 47, B-G Zoning District), with conditions.

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BARBARA FORD

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HILDA GREENBAUM

\_\_\_\_\_  
ALBERT WOODHULL

FILED THIS \_\_\_\_\_ day of \_\_\_\_\_, 2008 at \_\_\_\_\_,  
in the office of the Amherst Town Clerk \_\_\_\_\_.

TWENTY-DAY APPEAL period expires, \_\_\_\_\_ 2008.  
NOTICE OF DECISION mailed this \_\_\_\_\_ day of \_\_\_\_\_, 2008  
to the attached list of addresses by \_\_\_\_\_, for the Board.

NOTICE OF PERMIT or Variance filed this \_\_\_\_\_ day of \_\_\_\_\_, 2008,  
in the Hampshire County Registry of Deeds.

**Town of Amherst**  
**Zoning Board of Appeals**

*SPECIAL PERMIT*

The Amherst Zoning Board of Appeals hereby grants a Special Permit to Jordel Corp. dba Delano's, for a modification of Special Permit ZBA FY90-6 for seasonal outdoor dining with alcohol service under Section 5.041 of the Zoning Bylaw, at 55-57 North Pleasant Street (Map 14A, Parcel 47, B-G Zoning District), subject to the following conditions:

1. The building alterations, patio, fencing, lighting and plantings shall be made according to the plans approved by the Board at a public meeting on September 3, 2008.
2. The indoor/outdoor establishment and the delivery service shall be managed according to the Management Plan as amended and approved by the Board at a public meeting on September 3, 2008.
3. The hours of operation for the patio and indoor restaurant shall be 11:00 a.m. to 1:00 a.m. seven days per week.
4. The hours of operation for walk-in customers who ask for take-out food shall take place between the hours of 11 a.m. and 1 a.m.
5. The hours of operation for the delivery service shall be between the hours of 10 a.m. and 2 a.m.
6. Delivery service personnel shall pick-up deliveries from the kitchen through the back door only when the front bar/restaurant area closes at 1 a.m.
7. Deliveries to the restaurant shall be made during normal business hours.
8. The number of persons at the restaurant, indoor and out, patrons and staff shall not exceed ninety-nine (99) at any time.
9. There shall be a staff person monitoring the back exit and the patio gate whenever the patio is open from 8:00 p.m. until closing seven days per week. If needed, a monitor shall be stationed at each entrance/exit at a time earlier than 8:00 p.m.
10. The maximum number of customers allowed to occupy the patio at any given time shall be limited to twenty-four (24).
11. Noise emanating from the patio shall be no louder at the property boundary than the ambient noise in the area.
12. Diners may enter and exit the patio from the outdoor gate until 9 p.m.;
13. Indoor patrons must enter and exit the building from North Pleasant Street only.
14. After 9 p.m., all patrons, indoors or out, shall exit year-round from the front of the building.
15. Outdoor dining shall cease, and outdoor furniture removed and stored between November 1<sup>st</sup> and April 1<sup>st</sup>.
16. The service window at the back of the building shall be used by patio diners only, and shall not be used for take-out orders.
17. The management shall maintain the area surrounding the restaurant, including the public sidewalk, so that it remains clear of litter at all times.
18. Refuse/recycling shall be conducted according to the approved Management Plan.
19. There shall be no live or recorded music played outdoors on the patio.



20. There shall be no live music permitted within the restaurant. **Recorded** music will be permitted within the restaurant, but its volume shall be controlled such that the music is not audible outside the building.
21. Parking for delivery personnel shall be off-site.
22. The proprietor shall not serve or permit patrons to congregate on the property outside the patio. The conduct of patrons waiting outside on North Pleasant Street to enter the establishment shall be supervised by staff.
23. All employees who serve alcohol, including the restaurant manager, shall be appropriately trained and certified in ServeSafe or comparable alcohol service courses;
24. There shall be no disposable plates, glasses or utensils used for the outdoor dining.
25. Patio fencing shall be approximately four (4) feet high, and rear fencing shall be six (6) feet high.
26. Fencing and landscaping shall be maintained in perpetuity.
27. Any changes to existing signs, any new signs or changes to the fencing varying from that approved by the Board shall be submitted to the Design Review Board for review and to the Zoning Board of Appeals for approval at a public meeting.
28. If the business is leased or assumes a change of management, a new management plan shall be submitted to the Board for its review and approval at a public meeting.
29. This permit shall expire upon change of ownership of the business.

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Barbara Ford, Chair  
Amherst Zoning Board of Appeals

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DATE